IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.609 OF 2000

Sharad Bhaskar Chikane)
aged about 27 years, at present)
detained in Yerwada Central)
Prison, Pune, Resident of Gulpoli)
Tal-Barshi. Dist.Solapur,)
Maharashtra.)..Appellant
(Org.Accused No.1

Versus

1. The State of Maharashtra)
(At the instance of Vairag)
Police Station, Sholapur.)

2. Smt.Vanmala Sukhdeo Chikane)

R/o Gulpoli, Tal-Barshi)
Dist. Solapur, Maharashtra)..Respondents

Mr.Shirish Gupte Sr.Counsel with Ms.Sharmila Kaushik for the appellant.

Mrs.V.R.Bhosale, Addl.Public Prosecutor for the Respondent No.1/State.

W I T H

CRIMINAL APPEAL NO.99 OF 2001

The State of Maharashtra)..Appellant
(Org.Complainant)
(At the instance of Police
Station officer, Police
Station Vairag, Tal.Barshi,
Dist.Solapur.)

Versus

1. Sharad Bhaskar Chikane)
(Name of Respondent No.1)
deleted vide Court's order)
dated 9.4.2001)

2. Rajendra Prabhu Chikane)
Age 26 Years)

3. Shashikant Bhaskar Chikane)
Age 35 Years.)

All resident of Gulpoli)
Taluka Barshi, Dist. Solapur)..Respondents.

Mrs.V.R.Bhosale Additional Public Prosecutor for the Appellant/State.

Mr.Shirish Gupte Senior Counsel with Ms.Ruchita Dhuru for Respondent Nos.2 & 3.

Coram : R.M.LODHA & R.S.MOHITE,JJ

Date : 02.03.2005 and 03.03.2005.

ORAL JUDGMENT (Per : R.S.Mohite,J)

1. These two Appeals have been preferred against the Judgment and order dated 31.7.2000 passed by the IInd Additional Sessions Judge, Solapur in Sessions Case No.250/99. By the said Judgment and order the IInd Additional Sessions Judge, Solapur, convicted accused No.1 Sharad Bhaskar Chikane for committing an offence punishable under Section 302 of IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.6000/-, in default, to undergo further RI for a period of 6 months. Accused Nos.2 & 3 were acquitted of the offence punishable under Section 302 read with section 34 of the IPC. All the accused were acquitted from the charge of committing an offence punishable under Section 37 read with Section 135 of the Bombay Police Act. It was directed that in case the fine amount was realised, an amount of Rs.5000/- be given to Vanmala, the widow of the deceased Sukhdeo Chikane.

2. The brief facts of the prosecution case were as under :-

(a) That the deceased Sukhdeo Chikane was the Sarpanch of village Gulpoli, Taluka Barshi, Dist. Solapur since 1990. He was a resident of village Gulpoli. The Complainant (PW 1) Vikram Janardhan Chikane who is an eye witness was a cousin brother of the deceased Sukhdeo. Dipak Janardhan Chikane (PW 2) was the real brother of the Complainant Vikram and thus another cousin brother of the deceased Sukhdeo. Avinash Brahmadeo Chikane (PW 3) who is the 2nd eye witness was a close relative of PW 1 Vikram and PW 2 Dipak. Anil Mali (Pw 4) was a person who was from the Shivsena group in the village, of which group the deceased Sukhdeo was the leader.

(b) The father of deceased Sukhdeo was Bhaskar. An agricultural land of Bhaskar was situated next to the land of one Kisan Sawant who was his son-in-law. In respect of the said land there was a boundary dispute between the family members of Bhaskar Chikane and Kisan Sawant. Yet another son of Bhaskar by name Shirish had filed Regular Civil Suit No.204/93 against Kisan Sawant and one another

seeking an injunction. The said suit had been filed on 30.4.1993. On 26.12.1996 the TILR had effected measurement in respect of the disputed areas which were the subject matter of the suit. The prosecution case was that in view of such disputes, there was bad blood and enemity between the deceased Sukhdeo on the one hand and the family members of Bhaskar including his sons. The record indicates that on 13.10.1997, deceased Sukhdeo had also filed a criminal case being Criminal case No.6253/97 in the Court of JMFC Barshi. The said case was filed against accused no.1 Sharad, accused no.3 Shashikant and one of their brother Dhananjay alleging commission of an offences under sections 323, 504 & 34 of the IPC. The evidence indicates that such legal proceedings were pending in the Court when the incident, which is the subject matter of the present case, took place on 16.9.1999.

(c) The prosecution case is that on 16.9.1999, at about 9.30 A.M. deceased Sukhdeo alongwith (PW 1) Vikram, (PW 3) Avinash, (PW 4) Anil Mali, Brahmadev Chikane, Babruvan Machale, Sopan Machale, Shridhar Machale, Nagnath Machale, Laxman Shinde and Gautam Chikane started from village Gulpoli in a jeep. They were proceeding to the Sub-Registrar office at village Vairag in order to execute a Sale deed by which one of them i.e. Brahmdeo Chikane was to

purchase the land of one Sopan Machale, which land was situated at village Gulpoli.

(d) The jeep carrying the persons as aforesaid reached the Vairag Sub-Registrar's office at about 12.00 noon. A Stamp vendor/Bond writer by name Kale scribed the sale deed and thereafter the sale deed was executed in the Sub-Registrar's office.

(e) After the execution of the sale deed at about 1.30 P.M., the aforesaid persons came out of the Sub-Registrar's office and reached upto their jeep which was standing on the road adjoining the office. At that time accused no.1 Sharad Bhaskar Chikane, accused no.2 Rajendra Prabhu Chikane and accused no.3 Shashikant @ Sheshrao Chikane came running towards them from the eastern side. Accused no.3 threw chilli powder in the eyes of deceased Sukhdeo. At that time accused no.1 gave a blow on the head of the deceased Sukhdeo with a Sattur which he was carrying with him. On receiving this blow Sukhdeo collapsed on the ground. All the three accused Sharad, Shashikant and Rajendra then inflicted blows with the sattur which they were carrying on the head of the deceased. Sukhdeo received several injuries on his head and his brain matter came out of his skull. Thereafter all the accused persons ran away

towards the east carrying their satturs. PW 1 Vikram Chikane who had witnessed the entire incident ran towards the direction of Vairag police station. He arrived at the police station in a frightened condition at about 1.45 P.M. and narrated the incident to the police.

(f) At 2.00 P.M. i.e. within half an hour of the occurance of the incident, the police recorded the FIR (Exh.15) of PW 1 Vikram. In his FIR Vikram named all the 3 accused and categorically stated that they had assaulted the deceased on his head with the koytas which they were carrying with them.

(g) On the basis of the FIR (Exh.15) PW-11 PSI Rajkumar Balaji Kendre registered an offence under Section 307 read with 34 of the IPC and 135 of the Bombay Police Act against all the 3 accused named in the FIR. Even while he was recording his FIR he sent his staff members ahead to the spot of incident for taking the injured to the hospital. He himself followed and reached the spot of the incident a little later. On reaching the spot he found that a lot of blood could be seen on the spot. Two pieces of brain matter and a piece of a skull were also found on the spot. He saw a goggle, a pair of slippers, a steel glass and a Rs.10/- note on the spot. He prepared a spot panchanama (Exh.25) in the

presence of panch witness in respect of the seizure of the aforesaid articles as well as seizure of blood stained soil. Articles 1 to 9 produced before the Court were the articles which were seized under the said panchanama.

(h) Even before the arrival of PW 11 PSI Rajkumar Kendre, the deceased Sukhdeo had been removed from the aforesaid scene of the offence by PW 3 Avinash, PW 4 Anil Mali and one Vilas Sawant. These 3 persons had put Sukhdeo in another private jeep and had rushed him towards the Solapur Civil Hospital. While they were proceeding towards the hospital they saw PW 2 Dipak on the way near Naka No.3. The jeep was stopped and Dipak also boarded this jeep. By that time they reached village Nanaj, they found that the body of Sukhdeo had cooled. They however, proceeded to Solapur civil hospital where Sukhdeo was declared dead on admission. While carrying the body of Sukhdeo the clothes of PW 3 Avinash Chikane and Vilas Sawant had got stained with blood. Articles 19 & 20 produced before the Court were the clothes of (PW 3) Avinash which subsequently came to be attached in the course of investigation.

(i) At the hospital, the police made enquiry with Dipak (PW 2) and Dipak narrated that Sukhdeo had been injured near Sub-Registrar’s office Vairag by

the 3 accused with a sattur and by a pistol. One Police head Constable Abdul Shaikh (Court witness no.1) was then on duty at the Civil hospital and he was a Police officer to whom Dipak made his disclosure as aforesaid. (CW 1) Abdul Shaikh then prepared an inquest panchanama in which it was mentioned that Sharad Chikane, Sheshrao Chikane and others had fired a bullet from the revolver and had caused injuries to Sukhdeo by means of a sattur used for cutting sugarcane. Abdul Shaikh made an entry in the station diary maintained at the police chowky at the Civil hospital. A copy of this entry was exhibited at (Exh.66) during the trial through the evidence of (CW 1) Abdul Shaikh.

(j) In the meanwhile, (PW 11) PSI Kendre had recorded the statement of 8 witnesses such as Narsinh Kale, Kamalakar Govardhan and others. He sent a police party for searching out the accused persons and at 6.15 in the evening accused no.1 and accused no.2 were accosted and brought to the police station. They were arrested under an arrest panchanama (Exh.50) conducted between 8.15 hours to 19.00 hours.

(k) At the Civil hospital the post mortem on the dead body of Sukhdeo commenced at 6.30 P.M. and was completed at 8.30 P.M. The following external

injuries were found on the body of the deceased Sukhdeo :-

Purforating chop wounds over front of head involving forehead and frontal regions extending between lt frontal (at 2" above lt ear) to back of Rt ear measuring about 14" x 3" cavity deep ; vault of skull is fractured into multiple pieces and cranial cavity is exposed to exterior exposing the lacerated brain. Anatomical continuity is lost, deformity due to disruption of scalp and skull into multiple pieces present disrupted scalp tissue and fractured bony fragments embedied and driven inside the brain and cranial cavity. Damage is irregular and directed obliquely from lt fronto parietal region to the level of nose and orbits on centre and upto rt. ear on right side.

2. Oval shaped purporting wound over Rt.side of face in maller region 1" x112" x deep upto maxillary sinus. Fractured bony fragments driven inside. No E/o blackening soothing or sinjing.

3. Irregular purporting injury at base of nose of size 2&1/2" x 1/2" cavity deep cutting through nasal bone. Skin flap separated exposing the cutbone associated with fracture underneath involving nasal bone, bones of anterior cranial fossa.

4. Contused abraision over face in between injury no.2, 3 described associated with extra vassation and fracture underneath.

5. Transversely situated contusion over rateral aspect at rt. side of neck measuring 3" in length associated with extra vassation underneath (dark red in colour).

6. Incised chop wound over back of head in Rt. occipital region vertically situated measuring 4" x 1/2" x cavity deep. Bone cut obliquely into pieces and driven inwards.

7. Chop wound vertically situated behind Rt. ear 3" x 1/2" x bone deep ends are split injury is crossing injury no.1

resulting into deformity and loss of anatomical continuity at Rt.ear.

(l) The doctor opined that all the injuries were fresh and caused due to a heavy sharp object. That injury no.1 was due to multiple blows in the same region. He found that there was a fracture of the vault of the skull, base of the skull and the facial bones with deformity. He found that anatomical continuity was lost in the frontal region of the skull. There was extravassation in the right mastoid and right side of ausopotil region. He found a perforating injury to the vault and partly particularly separated base fractured in anterior cranial fossa and right occipital bone. The brain matter was lacerated and the fractured fragments were embeded in brain material involving frontoperiatal lobes on both sides, with subdural haemorrhage all over the brain surface, brain stem and cerebellum. Blood clods were present.

(m) Apart from the aforesaid internal and external injuries the doctor who performed the post mortem i.e. (PW 8) Ajay Keoliya noted that reddish chilli powder like material was found over the chest of the deceased. He opined that the cause of death was "perforating chop wounds over head and face, associated with fracture, skull, facial bone and cerebral laceration."

(n) On 17.9.1999 accused no.1 Sharad disclosed that he had parked a two-wheeler Bajaj M-80 vehicle bearing No.MH-13-C-4157 on the rear side of the Girls' school at Vairale. The said vehicle was seized under a panchanama in the presence of 2 panchas, of which (PW 2) Dipak was one of the panch. It was the prosecution case that this vehicle had been used by the accused to flee from the scene of the offence. On 17.9.1999 PW 3 Avinash and Vilas Sawant came to the police station and as their clothes were found to be blood stained, they were seized by PW 11 PSI Kendre under a panchanama (Exh.26). On 17.7.1999 PSI Kendre recorded the statement of Dipak (PW 2).

(o) On 18.9.1999 PSI Kendre recorded the statements of several additional witnesses. Accused no.3 Shashikant was accosted by the police and was produced before him. PSI Kendre arrested accused no.3 and seized his blood stains clothes under a panchanama (Exh.28) in the presence of panchas, one amongst whom was (PW 6) Rameshwar.

(p) On 19.9.1999 accused no.3 disclosed that he had hidden certain weapons under a heap of stones near the well of the field of one Nandkumar within the boundary of village Ladole. In pursuance of the

memorandum prepared the police, alongwith accused no.3 the police party proceeded to the spot disclosed by accused no.3 and discovered 2 satturs kept hidden in a heap of stones. These 2 satturs were articles-25 & 26 produced before the Court. The aforesaid 2 satturs were seized under a panchanama (Exh.40) in the presence of 2 panchas, one of whom was (Pw 9) Bhau Pawar. It may be mentioned at this stage that (PW 9) did not support the prosecution case and therefore, this panchanama had to be proved by the prosecution through the evidence of the Investigating officer. It was found at the time of the seizure of the weapons that the handles of these weapons were blood stained.

(q) On 22.9.1999 the Investigating officer PSI Kendre sent all the accused to the primary health centre for collection of their blood samples.

(r) On 27.9.1999, under his covering letter dated 23.9.1999, 25 articles seized during the investigation were sent by the Investigating officer to the Regional Forensic Science Laboratory for a Chemical Analyser’s report. In the meanwhile, the forensic medical department of the V.M.Medical college had also sent the red chilli powder like substance for analysis to the Regional Forensic Liboratory. The blood sample of the accused and

deceased were also sent for analysis to the said laboratory. In due course, the Investigating officer received C.A. reports in respect of all the articles sent. Two reports dated 31.1.2000 indicated the finding of the C.A. on the 25 articles and his further finding that the red powder found ont he chest of the deceased was infact chilli (capsicum) powder.

(s) The Investigating officer had in the meanwhile, received the post mortem report. He collected the certified copy of the plaint & complaint in the litigation pending between the parties. Exh.52 was the certified copy of the plaint in RCS No.204/93 and Exh.53 was a certified copy of the complaint filed by deceased Sukhdeo against accused no.1, accused no.3 and one of their brother Rajendra. He also collected a copy of the map of measurement in respect of the disputed land made by TILR and a copy of the sale deed executed on 16.9.1999 in between Shankar Chikane and Sopan Machale.

(t) Ultimately on completion of his investigation, PW 11 PSI Rajkumar Kendre filed the charge-sheet.

3. At the trial, the Sessions Judge framed charges against the accused for committing offences punishable under Section 302 read with 34 of IPC and

under Section 37 (i) read with section 135 of the Bombay Police Act. The accused pleaded not guilty to the charges. In order to prove their case the prosecution examined as many as 13 witnesses. On an application on behalf of the accused, Police head constable Abdul Shaikh was called and examined as Court witness no.1. On behalf of the defence, 2 persons claiming to be eye witnesses were examined. They were (DW 1) Shridhar and (DW 2) Tayyab Pathan. After recording the statements of all the 3 accused under Section 313 of Cr.P.C. and hearing the arguments of both the sides, the IInd Additional Sessions Judge, Solapur was pleased to pass the impugned Judgment and order, convicting accused no.1 Sharad and acquitting accused no.2 and accused no.3 as aforesaid. Thus the aforesaid 2 appeals have come to be filed before us.

4. We have heard both the sides and perused the entire evidence on record. On behalf of accused no.1 Sharad Chikane it was contended that having partly dis-believed all the eye witnesses and having given the benefit of doubt to accused no.2 Rajendra and accused no.3 Shashikant, there was no justification in convicting accused no.1 Sharad on the evidence of the same eye witnesses. It was contended that all the eye witnesses had deposed to a single incident and if these witnesses were found

unreliable and unbelievable in so far as accused nos.2 & 3 were concerned, it would have been proper to extend the same benefit of doubt to accused no.1 Sharad. It was contended that out of the 3 eye witnesses examined, 2 were close relatives of the deceased Sukhdeo and one was his political associate. It was contended that independent eye witnesses such as a Bond writer Kale who was present at the scene were not examined by the prosecution. It was also contended that the prosecution had supressed the police diary entry (Exh.66) recorded at the hospital police chowky. It was pointed out that accused had to make an application to produce a copy of the station diary which was ultimately produced and exhibited through the evidence of (CW 1) i.e. Head constable Abdul Shaikh. It was contended that the evidence of (CW 1) as read with the contents of Exh.66, indicated a different story in which bullet wound was said to have been caused on the head of the deceased alongwith wounds caused by satturs. On behalf of accused nos.2 & 3 by way of a reply to the contentions made by the learned Addl.Public Prosecutor in the State appeal it was contended that the reasoning given for acquitting accused nos.2 & 3 were cogent and could not be said to be perverse. By relying on several Judgments including the Judgment of the Apex Court in the case of **Hari Ram V. State of Rajasthan reported in AIR**

2000 SUPREME COURT 1647 and Dwarka Das V.State of haryana reported in AIR 2003 SUPREME COURT 185, it was contended that in an Appeal against acquittal though the power of authority to apraise the evidence in an Appeal was comprehensive and wide, yet if 2 views were reasonably possible on the state of evidence, one view supporting the acquittal and the other indicating conviction then in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it felt that if it had sat as a trial Court, it would have taken the other view. That while reappreciating the evidence the rule of prudence required that the High Court should give proper weight and consideration to the views of the trial Judge and that it was only when the Judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on wrong appreciation of evidence then it would be just and proper for the Court to reverse the said Judgment in an Appeal against acquittal.

5. On behalf of the prosecution, the learned Addl.Public Prosecutor supported the reasoning and the finding of the trial Court in so far as the same pertained to handing over a conviction to accused no.1. The learned Addl.Public Prosecutor however, vehemently assailed the reasoning and finding of the trial Court pertaining to the acquittal of accused

nos.2 & 3. She pointed out that the only reason given for acquitting accused no.2 was that he had not been named in the station diary entry (Exh.66) which had been produced and exhibited through the evidence of (CW 1) Abdul Shaikh. The learned Addl.Public Prosecutor argued that apart from this single factor there was absolutely nothing to distinguish the case of accused no.2 from the case of accused no.1 who had been convicted. It was pointed out that the contents of the station diary entry (Exh.66) were not a substantive piece of evidence. These contents could only have been used to contradict the evidence of the person who had given the information. It was contended that this station diary entry according to CW 1 Police head constable Abdul Shaikh, had been made on information given by PW 2 Dipak. That the defence had not chosen to re-call PW 2 and get his omissions or contradictions on record. It was further contended that in any case, Exh.66 did not give an exhaustive list of the assailants as it referred to accused nos.1 & 3 alongwith others as being persons who had inflicted the injuries. It was lastly pointed out that it had been lost sight of that (PW 2) was himself not an eye witness and had been told about the incident by another person by name Sawant who had not been examined. That even if the different version as contained in Exh.66 had been properly

proved as a contradiction, even then it would have very little weight as having been given by a person who was not an eye witness and whose version was in any case hearsay. It was pointed out that in so far as PW 1 was concerned, he had reached the police station within 15 minutes of the incident and the recording of his FIR had been completed within half an hour. That in this FIR there was a categorical reference to all the 3 accused, the nature of the weapon used, the nature of the overt act and even the discription of the anatomical part where the injuries were inflicted. It was contended that the trial Court had given undue importance to an omission in the statement of Vikram Chikane PW 1 brought on record, which related to the allegation relating to the throwing of chilli powder in the eyes of the deceased. In this connection it was pointed out that though the throwing of chilli powder might have been an important event in the sequence of the assault yet it could not be lost sight of that PW 1 Vikram had claimed that he was in a frightened state while he ran towards the Vairag police station. That PW 1 had arrived at the police station after witnessing a ghastly and brutal assault on the deceased and if he had ommitted to tell the police about the throwing of chilli powder, in the circumstances of the case, it could not be said that such an omission could be a reason for

disbelieving the entire evidence against accused no.3 and for acquitting him of the offences charged. It was contended that the throwing of chilli powder by accused no.3 was also supported by PW 3 Avinash Chikane and PW 4 Anil Mali. It was further pointed out that infact red powder was discovered on the chest of the deceased and that the red powder found on the chest was confirmed to be chilli powder by the C.A. in his report (Exh.60). It was further pointed out that the post mortem notes also indicated that there was haemorrhage in the eyes at the subconjunctivital level and this also indicated an attack in that area. It was contended that the presence of (PW 1) Vikram at the scene and time when the offence was committed was corroborated by the other eye witnesses i.e. PW 3 and PW 4. That the evidence of PW 1 was also corroborated by his own FIR. The fact that human blood was found on the clothes of PW 3 Avinash was yet another factor which indicated that Avinash must have been present as an eye witness on the spot. It was contended that benefit had been given to accused no.3 Shashikant on the basis of the contents of (Exh.66) where one of the assailants was named as Sheshrao. It was contended that PW 1 Vikram, both in his substantive evidence in Court as well as in the FIR had clearly referred to accused no.3 as Shashikant and had clarified in the substantive evidence that accused

no.3 was known as Shashikant @ Sheshrao and that there is no cross-examination in this regard. That even PW 3 had referred to accused no.3 as Sheshrao and Shashikant at different places in his evidence. It was contended that the reasoning given by the trial Court for acquitting Shashikant was legally untenable and otherwise perverse. It was contended that all the accused had a strong motive for committing the murder of Sukhdeo. The record indicated both civil and criminal litigation between the deceased and the accused or members of their families. The action of the accused in a different village indicated that they had come with the common intention of assaulting the accused. That the brutal manner in which blows with dangerous weapons were given on the head of the deceased clearly indicated that the intention was to murder the deceased. In so far as the discovery of the 2 weapons said to have been made by accused no.3, the learend Addl.Public Prosecutor pointed out that blood of 'A' group being the group of the deceased had been found on these 2 weapons. That trial Court ought not to have disbelieved the evidence relating to this discovery on the footing that there was some over writing in respect of the date of the memorandum panchanama and the time given on the seizure panchanama made in pursuance of the disclosure. It was also contended that the trial

Court had indulged in speculation in concluding that PW 2 Dipak must have been an eye witness, when infact there was absolutely no material on record to indicate that PW 2 Dipak had witnessed the incident in question. Learned Addl.Public Prosecutor however, conceded that the finding of the trial Court of there being no material to prove the existence of the order of the Collector under Section 37/135 of Bombay Police Act was not erroneous and stated that the prosecution was not seriously challenging the acquittal of all the accused of this charge.

6. We now propose to deal with all the contentions and we would first like to begin with the evidence of PW 1, eye witness Vikram Chikane. In his evidence Vikram states that on 16.9.1999 at about 9.30 A.M. he, PW 3 Avinash, Brahmadeo, Babruvan, Sopan, Shridhar, Nagnath, Laxman and Gautma had started from their village by a jeep in order to go to the Sub-Registrar's office at Vairag for executing a sale deed. The sale deed pertained to the purchase of land by Brahmadeo from Sopan, situated in village Gulpoli. That after reaching the Sub-Registrar's office at Vairag they got the sale deed prepared from a Stamp vendor/Bond writer by name Kale and thereafter the sale deed was executed. They all came out of the Sub-Registrar's

office with the intention of returning back to village Gulpoli. When they had come near their jeep, the 3 accused i.e. Sharad, Rajendra and Shashikant came running towards them from the eastern side. Accused no.3 Shashikant @ Sheshrao threw chilli powder in the eyes of the deceased Sukndeo. At that time accused no.1 Sharad inflicted a sattur injury on the head of Sukhdeo. As a result of this injury Sukhdeo collapsed on the ground. All the 3 accused then caused injuries on the head of Sukhdeo by means of satturs which they were carrying. As a result of these injuries the brain matter of Sukhdeo had come out of his skull. Thereafter all the accused ran away in the eastern direction alongwith their satturs. This witness ran in the direction of police station Vairag. In a frightened condition he narrated the incident to the police and the police recorded his complaint. The first criticism of the evidence of this witness was that though this witness has named 9 persons as being people who started in the jeep from village Gulpoli, he has not named the deceased Sukhdeo as being amongst the people in the jeep. In this connection, it was also pointed out that the names of 3 persons by name Nagnath, Laxman and Gautama who this witness stated in the substantive evidence as being amongst the group which started from village Gulpoli were not mentioned in the FIR lodged by this

witness. In our view, the omission by this witness to state that Sukhdeo was amongst the group of persons who started from village Gulpoli on 16.9.1999 is not of much significance. According to this witness PW 3 Avinash was one of the persons in the jeep and PW 3 Avinash in his evidence has categorically stated that Sukhdeo was a part of the group which started from village Gulpoli on the date of the incident. It may be mentioned here that according to PW 1 Vikram one of the persons who were admittedly in the group which started from village Gulpoli in the morning was Shridhar. This Shirdhar Sopan Machale was examined as defence witness no.1 and in his evidence he has categorically included Sukhdeo as being amongst the people who started in the jeep from village Gulpoli on 16.9.1999. The presence of the deceased in the jeep which started from village Gulpoli is therefore, admitted by the defence. The addition of names Nagnath, Laxman and Gautama as persons who were in the group is also not of much significance. None of these persons were examined by the prosecution as eye witnesses and the addition of these names created no ground or material to further the prosecution case. In any case the presence of Sukhdeo in the Sub-Registrar’s office at village Vairag is a fact which cannot be disputed because Sukhdeo has signed as a witness on the sale deed (Exh.45). Besides blood bearing his

blood group was found at the scene of the offence. The next contention of the defence was that in his FIR PW 1 Vikram had not stated that accused no.3 had thrown chilli powder in the eyes of deceased Sukhdeo. It is true that this is an important omission which would amount to a contradiction but for this reason alone we are not inclined to dis-believe the further evidence of PW 1 Vikram about the assault by all 3 accused on the head of the deceased Sukhdeo by means of sattur in their hands. It cannot be lost sight of that PW 1 Vikram was a witness to a ghastly and brutal incident of multiple stabbing on the head of Sukhdeo. The incident took place at about 1.30 P.M. and Pw 1 ran to the police station where he arrived at about 1.45 P.M. He has stated that he was in frightened condition, which evidence we find to be very natural. His FIR was immediately recorded by the police at 2.00 0"clock. In such a background, non mentioning in the FIR about throwing of chilli powder in the eyes of Sukhdeo cannot be said to be a reason for totally dis-believing the evidence of Pw 1. Nodoubt, this circumstance has been relied upon by the trial Court to give the benefit of doubt to accused no.3. However, we find that there is other material on record to indicate that the deposition of PW 1 about Shashikant throwing chilli powder in the eyes of Sukhdeo is a true fact. Firstly PW 3

Avinash has also stated about the throwing of chilli powder by accused no.3 in the eyes of Sukhdeo. In so far as evidence of Avinash is concerned, there is no omission or contradiction in this regard. Apart from this the post mortem notes indicates that "subconjunctival haemorrhage ++ was found in the eyes of deceased Sukhdeo and that reddish chilli powder was found over his chest. This material was collected and sent for Forensic analysis and the C.A. report (Exh.60) is that the reddish powder found on the chest of the deceased was indeed chilli powder. Apart from the aforesaid infirmities, there is absolutely nothing on record to cast any doubt on the version given by PW 1 Vikram in his evidence. The substantive evidence of PW 1 Vikram also stands corroborated by his own FIR (Exh.15) in which he has immediately implicated all the 3 accused persons by name and also described the overt acts attributed to them. The sale deed (Exh.45) is another document which establishes the presence of Pw 1 Vikram Chikane near the scene of the offence because Vikram is also one of the persons who have identified the parties to the sale deed. The evidence of PW 1 Vikram also stands corroborated by the evidence of PW 3 Avinash and we now propose to deal with the evidence of (PW 3) Avinash Chikane.

7. PW 3 Avinash has stated in his evidence that on

16.9.1999 he had accompanied his father Brahmadeo for execution of a sale deed. One Sopan, Nagnath, Shridhar, Sukhdeo, Vikram, Gautama, Bapu, Vilas and PW 4 Anil Mali were with him. They reached Vairag at about 11.00 or 11.30 A.M. They completed the work of scribing and registering the sale deed by 1.30 P.M. That thereafter he, Brahmadeo, Vikram, Gautam, Sukhdeo and others came towards their jeep in order to return back to village Gulpoli. At that time, accused Sheshrao came towards them and threw chilli powder in the eyes of Sukhdeo. Accused Rajendra and Sharad also came from the marathi school. They were armed with satturs. Accused no.1 Sharad dealt a blow by means of a sattur on the head of Sukhdeo. Sukhdeo fell on the ground. Thereafter, Sharad, Rajendra and Shashikant caused injuries on the face and head of Sukhdeo by means of satturs. Sukhdeo fell on the ground and his brain matter was come out of his head. He did not intervene as Sheshrao had threatened that incase anybody intervened, he would kill the intervenor like Sukhdeo. He got frightened and ran away towards Sub-Registrar office. Dattatray Khoke and Balasaheb Vishnu Chikane left the polace by taking the jeep. By thinking that Sukhdeo had died Sharad Chikane and Shashikant Chikane ran away from the place with their weapons. That after sometime, policemen had come there by a private jeep. He had

lifted Sukhdeo and put him in that jeep and had taken the jeep to Solapur. That he, Vilas and PW 4 Anil Mali were in the jeep. That on the way to the hospital they saw PW 2 Dipak standing near naka no.2. They took him into the jeep. They arrived at Solapur Civil Hospital where Sukhdeo was declared dead. He contended that his clothes and the clothes of Vilas had got stained with blood of Sukhdeo while he was being taken by them to the hospital. He identified his clothes articles-19 & 20 before the Court. As regards this witness we find that his presence at the spot of the incident is spoken about by PW 1 Vikram and his name also appears in the FIR as being one of the persons who had come in the jeep from village Gulpoli to village Vairag. Apart from this the fact that clothes of this witness were stained with blood while carrying Sukhdeo is corroborated by the C.A.'s report which indicates that human blood was found on both his paijama and full shirt, though the blood group could not be determined. The finding of human blood on his clothes is another factor which fortifies our view that this witness must indeed has been present at the scene of the offence. There is absolutely no omission or contradiction in the evidence of this witness and we find no reason to dis-card the version which is in consonance with the version given by (PW 1) Vikram. The 3rd eye witness relied

upon by the prosecution is PW 4 Anil Mali. Having believed 2 eye witnesses, we would like to observe that we would prefer not place any reliance on the evidence of this witness for the following reasons :-

(i) Firstly this witness claims to be a person who started from village Gulpoli alongwith the group which left in the jeep. The evidence of PW 1 and the FIR lodged by PW 2 however, does not name PW 4 Anil Mali as being one of the persons in the group which had started from the village. The signature of PW 4 does not appear on the sale deed. Though the evidence of PW 4 regarding the actual incident is consistent with the evidence of PW 1 & PW 2, this witness in addition stated that he, Avinash, Vilas Chikane & Gautama had put the injured Sukhdeo in the jeep and had taken him to Govt. hospital Vairag where they had advised to take the deceased to Solapur hospital. That while they were proceeding to Civil hospital, Solapur they saw the Dipak at the naka and he was taken into the jeep. Thereafter they went to Civil hospital Solapur and at the hospital Sukhdeo was declared dead. The version of this witness that he alongwith Vilas and Gautama had lifted the deceased and put him into the jeep was found to be an omission in his statement. His story that they have taken the deceased to the Govt.

hospital at Vairag was also found to be omission in his police statement. In fact, we have noticed that this aspect of taking of the deceased to Govt. hospital at Vairag is not supported by the evidence of PW 3 Avinash. Even the fact that he alongwith 3 others had lifted Sukhdeo and put him in the jeep for taking him to Govt. hospital Vairag is also a proved omission. The version of this witness that on the route to the hospital they had picked up Dipak is yet another omission in the evidence of this witness. Nodoubt, PW 3 Avinash has included the name of Pw 4 Anil Mali being amongst the group which started from village Gulpoli in a jeep on the morning of 16.9.1999. However, though PW 3 has named several persons as being present at the scene of the offence the name of PW 4 is not expressly mentioned as being amongst those persons. One more circumstance that makes us cautious while accepting the evidence of PW 4 Anil Mali is the fact that his clothes were not seized. Normally, speaking if the deceased had been lifted by this witness alongwith PW 3 then the finding of blood stains on his clothes would have been natural and would have been corroborative of his evidence. In the aforesaid circumstances, we do not feel it necessary to place reliance on the evidence of this witness.

8. Having believed the evidence of PW 1 Vikram and PW 3 Avinash the contention of the defence that the trial Court had acquitted accused no.2 Rajendra for valid and cogent reasons, is not acceptable. Accused no.2 Rajendra has been acquitted by the trial Court on the sole ground that his name does not appear specifically as one of the assailants in the station diary entry (Exh.66). Our first comment of this that the contents of a station diary entry is not a substantive piece of evidence and the reference to the contents of this document for acquitting accused no.2 Rajendra without the omission therein being proved in accordance with law was grossly improper and impermissible. According to Court witness no.1 Abdul Shaikh, the entry at Exh.66 was recorded as per the say of (Pw 2) Dipak. If there was any omission in the contents of Exh.66, it should have been brought on record by putting questions to PW 2. PW 2 Dipak could have been re-called in order to bring the omissions on record. This was not attempted to be done by the accused. It was then argued that even in the substantive evidence of Court witness Abdul Shaikh, the contents of Exh.66 have been brought on record and even in this evidence there was no mention of accused no.2 as being one of the assailants. In this regard, we can only say that PW 2 Dipak was admittedly not an eye witness to the incident. The evidence of all

the prosecution witnesses indicate that Dipak was picked up on the way to the hospital. His evidence indicates that at the hospital the hospital staff opined that the injuries to the deceased may have been caused by a bullet. It appears that the opinion of Dipak was formed on the basis of what was being said at the hospital by the hospital staff. Dipak in his evidence does not claim to be an eye witness. In fact he states that he learnt about the incident from one Vilas Sawant, who has not been examined in this case. In this view of the matter, even the version given by the Court witness Abdul Shaikh, cannot be given any importance and the absence of the name of accused no.2 in the evidence of Court witness no.1 Abdul Shaikh cannot be said to be fatal, when Dipak was not an eye witness to the incident. We have noticed that the trial Court has got over this aspect by speculating that Dipak must have been an eye witness. The trial Judge categorically observed that he was not willing to believe that Dipak was not an eye witness. We find absolutely no material on record to support this finding, which must be therefore, held to be purely speculative and therefore, bad and perverse.

9. The learned Counsel for the defence then submitted that the benefit of doubt was rightly given to accused no.3 as PW 3 Avinash had referred

to the assailants as Sheshrao and as Sheshrao Bhaskar Chikane was also shown as one of the assailants in the station diary entry at (Exh.66). We find from the record that the name of one of the assailants being Sheshrao Bhaskar Chikane in the station diary entry Exh.66 has been made one of the ground by the trial Court to acquit accused no.3. We find this reasoning of the trial Court to be improper and unacceptable. As stated here-in-above, (Exh.66) was not a substantive piece of evidence and any omission therein, unless proved, could not have been referred to by the trial Court for recording any finding of conviction or acquittal in this case. PW 1 Vikram has categorically referred to the 3rd assailant as Shashikant @ Sheshrao. There is no cross-examination of PW 1 Vikram on this aspect of the matter. In the evidence of PW 3 Avinash, we find that though at some places he has referred to accused no.3 as Sheshrao, at least at 3 places in his evidence, he has named the 3rd accused as Shashikant. We find that in his evidence, PW 3 has used the words Sheshrao & Shashikant inter changeably. In our view, this discrepancy cannot be a valid and cogent ground for giving benefit of doubt to accused no.3 Shashikant and therefore, the acquittal of Shashikant in our view, was grossly improper.

10. The Counsel appearing for the defence then contended that there was a different version on the record relating to Sukhdeo suffering his injuries due to the firing of a revolver as well as by satturs. He contended that this different story raised a grave doubt about the verasity of the prosecution story. By referring to the Judgments mentioned supra Counsel for the defence contended that if 2 versions were before the Court and if one of them was in favour of the accused, then in an Appeal against acquittal, the version that was favourable to the accused ought to be preferred. Though there is no quarrel with this legal proposition on facts we find no substance in this contention. The story relating to wounds caused by bullet was raised by the hospital staff at the Civil hospital, Solapur. From there the story was picked up by Pw 2 who was not an eye witness and he was the person who then conveyed this story to (CW 1) Abdul Shaikh and this is why this story, according to (CW 1), was reduced into writing while making the station diary entry (Exh.66). (CW 1) Abdul Shaikh has candidly admitted that due to the version narrated to him by PW 2 Dipak, during his investigation he was under the impression that the wounds may have been caused by a bullet & sattur. This is the very same police officer who conducted the inquest panchanama and that is how this aspect

of the matter seems to have crept into the inquest panchanama. There is absolutely nothing on record to indicate that there was any bullet fired or any wound suffered by the deceased Sukhdeo. The doctor who conducted the post mortem has ruled out the possibility of the wounds being caused by a bullet. No bullet or fire arm were recovered in this case. There is absolutely no material on record to suggest that a fire arm was used in the present incident. The so-called version in favour of the defence, in our view, has no basis what-so-ever. Before we close the Judgment, we must make a reference to one more circumstance which was dis-believed by the trial Court. According to the prosecution, accused no.3 was arrested on 18.9.1999. On 19.9.1999 he made a statement which was recorded in the form of memorandum, in pursuance of which 2 satturs were discovered from below a pile of stones from the field of one Nandkumar Patil situated on the boundary of village Ladole. The panch through which this discovery was sought to be proved was (PW 9) Babu Pawar but this witness did not support the prosecution. The trial Court observed that on close examination of the memorandum and the seizure panchanama it was evident that there was overwriting in respect of the date of memorandum and there was also overwriting in respect of the time of the seizure panchanama. We have carefully checked the

aforesaid 2 documents and we find that there is indeed an attempt to antedate the date as well as time as aforesaid. In this view of the matter, we feel that the trial Court was right in not placing reliance on these documents, not-with-standing the fact blood of the blood group of the deceased i.e. group "A" was found on the 2 weapons said to have been discovered.

11. In the net result, in view of the discussion here-in-above, we feel that this is a case where the conviction of accused no.1 will have to be confirmed and Appeal No.609/2000 preferred by him will have to be dismissed. Similarly, Criminal Appeal No.99/2001 filed by the State against accused nos.2 & 3 will have to be allowed. We, therefore, proceed to pass the following order :-

O R D E R

(1) Criminal Appeal No.609/2000 filed by accused No.1 Sharad Bhaskar Chikane is hereby dismissed and the conviction and sentence awarded to him is confirmed;

(2) Criminal Appeal No.99/2001 filed by the State of Maharashtra against the acquittal of accused no.2 Rajendra Prabhu Chikane and accused no.3 Shashikant

Bhaskar Chikane is hereby allowed and both these accused are convicted for an offence under Section 302 read with 34 of the IPC. Each of them is sentenced to under-go imprisonment for life and to pay a fine of Rs.6000/- each. Out of that total fine which may be recovered in this case, an amount of Rs.15,000/- or any lesser amount recovered by way of fine will be paid to respondent no.2 Smt.Vanmala Sukhdeo Chikane. Original accused nos.2 & 3 Rajendra and Shashikant will surrender their bail forthwith.

(R.M.LODHA,J)

(R.S.MOHITE,J)